

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2007

(Argued: November 28, 2007 Decided: January 30, 2008)

Docket Nos. 05-3021-cr(L), 05-5839-cr(CON),
06-3551-cr(CON), 06-3555-cr(CON)

- - - - -x

UNITED STATES OF AMERICA,

Appellee,

- v. -

NAT SCHLESINGER, A.K.A. NAFTULE
SCHLESINGER, A.K.A. ZVI POLLACK,
AND GOODMARK INDUSTRIES, INC.,

Defendants-Appellants.

- - - - -x

Before: JACOBS, Chief Judge, B.D.PARKER, WESLEY,
 Circuit Judges.

Nat Schlesinger appeals from a judgment of conviction entered in the Eastern District of New York (Spatt, J.). On appeal, Schlesinger argues that 28 U.S.C. § 2461(c) (2005) did not authorize the criminal forfeiture of the proceeds of his mail and wire fraud offenses. For the following reasons, we affirm the judgment below.

1 HERALD PRICE FAHRINGER,
2 Fahringer & Dubno (Erica T.
3 Dubno and Jeremy T. Gutman, on
4 the brief), New York, NY, for
5 Defendants-Appellants.
6

7 CYNTHIA M. MONACO, Assistant
8 United States Attorney (Roslynn
9 R. Mauskopf, United States
10 Attorney, Eastern District of
11 New York, on the brief, Peter A.
12 Norling, Lawrence Ferazani and
13 Richard Lunger, of counsel),
14 United States Attorney's Office
15 for the Eastern District of New
16 York, Brooklyn, NY, for
17 Appellee.
18

19 PER CURIAM:
20

21 Nat Schlesinger appeals from his August 2, 2006
22 conviction in the Eastern District of New York (Spatt, J.)
23 on a variety of arson and fraud charges. In a separate
24 summary order filed today, we reject a number of
25 Schlesinger's challenges to his conviction and sentence, as
26 well as challenges raised by co-defendant Goodmark
27 Industries, Inc. This opinion considers--and rejects--
28 Schlesinger's argument that the District Court lacked the
29 statutory authority to order the criminal forfeiture of the
30 proceeds of his mail and wire fraud offenses.

31 Schlesinger was convicted on seventeen counts of mail
32 fraud (in violation of 18 U.S.C. § 1341) and two counts of

1 wire fraud (in violation of 18 U.S.C. § 1343). The District
2 Court ordered that Schlesinger criminally forfeit the
3 proceeds of those offenses pursuant to 28 U.S.C. §
4 2461(c) (2005). That subsection (which was amended in 2006)
5 provided:

6 If a forfeiture of property is authorized in
7 connection with a violation of an Act of
8 Congress, and any person is charged in an
9 indictment or information with such violation
10 but no specific statutory provision is made
11 for criminal forfeiture upon conviction, the
12 Government may include the forfeiture in the
13 indictment or information. . . .

14
15 28 U.S.C. § 2461(c) (2005) (emphasis added). Schlesinger
16 relies on the highlighted clause. As Schlesinger notes, a
17 “specific statutory provision is made for criminal
18 forfeiture upon conviction” for mail and wire fraud: 18
19 U.S.C. § 982(a) (2) (A). Id. Moreover, as Schlesinger points
20 out, that provision authorizes criminal forfeiture only in
21 connection with mail and wire fraud “affecting a financial
22 institution,” a circumstance the parties agree is not
23 present here. 18 U.S.C. § 982(a) (2) (A). It follows, argues
24 Schlesinger, that neither § 2461(c) nor § 982(a) (2) (A)
25 authorizes the criminal forfeiture of the proceeds of his
26 mail and wire offenses, and the government thus falls
27 between two stools.

1 As the District Court concluded, § 2461(c) is not so
2 limited: The forfeiture at issue was effected under 18
3 U.S.C. § 981, which authorizes civil forfeiture for mail and
4 wire fraud, and which does not have the special
5 circumstances requirement of § 982. United States v.
6 Schlesinger, 396 F. Supp. 2d 267, 273-79 (E.D.N.Y. 2005);
7 see United States v. Razmilovic, 419 F.3d 134, 136 (2d. Cir
8 2005) ("Section 2461(c) thus authorizes criminal forfeiture
9 as a punishment for any act for which civil forfeiture is
10 authorized, and allows the government to combine criminal
11 conviction and criminal forfeiture in a consolidated
12 proceeding."); United States v. Jennings, 487 F.3d 564, 584
13 (8th Cir. 2007); United States v. Vampire Nation, 451 F.3d
14 189, 199 (3d Cir. 2006). For essentially the reasons stated
15 by the District Court, we affirm the order of forfeiture.